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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 454

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, ETC., AND FARMERS UNION CO-OPERATIVE GIN COMPANY, APPELLANTS,

vs.

WILLIAM LOWE, DOING BUSINESS UNDER THE TRADE NAME OF CAPITOL HILL GIN COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED OCTOBER 22, 1929

(34,585)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 22, 1930

[fols. a & 1-3] Citation, in usual form, showing service Rainey, Flynn, Green & Anderson et al., filed September 12, 1929, omitted in printing.

[fol. 4]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Equity. No. 1030

WILLIAM LOWE, Doing Business under the Trade Name of Capitol Hill Gin Company, Complainant,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, C. C. Childers, Fred Capshaw, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and Farmers Union Cooperative Gin Company, a Corporation, Respondents

BILL OF COMPLAINT—Filed April 9, 1929

William Lowe, doing business under the trade name of Capitol Hill Gin Company, brings this bill of complaint against the Corporation Commission of the State of Oklahoma, C. C. Childers, chairman, and Fred Capshaw and E. R. Hughes, members of the Corporation Commission of the state of Oklahoma, and Farmers Union Cooperative Gin Company, and each of them, and alleges the following:

I

That complainant, William Lowe, is now and was at all times hereinafter mentioned, engaged in and duly authorized to engage in the operation of a cotton gin in Capitol Hill at Oklahoma City, Oklahoma, under the trade name of Capitol Hill Gin Company, and under a license duly and regularly issued to him by said Corporation Commission of the State of Oklahoma, under and by virtue of Article IV, Chapter 20, Compiled Laws of Oklahoma of 1921, as

amended by Chapter 191 of the Session Laws of Oklahoma of 1923.

That the Corporation Commission of the State of Oklahoma is and was at all times hereinafter mentioned, a commission created by the Constitution of the State of Oklahoma, having its offices, headquarters and principal place of business in the City of Oklahoma City, County of Okla- [fol. 5] homa and State of Oklahoma, and within the jurisdiction of the District Court of the United States for the Western District of Oklahoma, and that the respondents, C. C. Childers, Fred Capshaw and E. R. Hughes, are and at all times hereinafter mentioned were the duly elected, qualified and acting members of said Commission with headquarters in said city of Oklahoma City, Oklahoma County, Oklahoma.

That the respondent gin company is a domestic corporation of the State of Oklahoma, organized and existing under and pursuant to Article XIX of Chapter 34 of the Compiled Statutes of Oklahoma of 1921.

II

That this is a suit in equity between citizens of the same State arising under and involving the construction and application of the Constitution and laws of the United States and the amount in controversy, exclusive of interest and costs, exceeds the sum of three thousand dollars ($3,000.00).

III

That under and by virtue of Section 3712 of Chapter 20 of Article IV, Compiled Statutes of Oklahoma of 1921, cotton gins are public utilities and the operation of the same for the purpose of ginning seed cotton is a public business and that complainant, in the operation of his said gin at Capitol Hill, Oklahoma, is engaged in a public business, and that the said cotton gin is a public utility.

IV

That under and by virtue of Section 3715 of said chapter and article, the Corporation Commission is vested with the power and authority and is charged with the duty of regu-

lating and controlling cotton gins and all matters relating to the performance of public duties, with power to fix rates, rules, charges and regulations to be observed by complainant and by all persons, firms or corporations operating gins [fol. 6] in the State of Oklahoma, and that by virtue of Section 3717 of said chapter and article said Corporation Commission is vested with the power and authority to enforce its orders against any person, firm or corporation maintaining or operating a gin or gins, by the imposition of fines and penalties for the violation of any of its said orders.

V

That said Commission, pursuant to the authority vested in it, has promulgated rates and charges applicable to all engaged in the ginning business.

VI

That under the provisions of Section 3713 of said chapter and article no person, firm or corporation in the State of Oklahoma is permitted to maintain or operate a gin or gins for the purpose of ginning seed cotton without first having secured a license from the Corporation Commission, and under the provisions of Section 3714 of said chapter and article, as amended by Chapter 191 of the Session Laws of 1923, all persons, firms and corporations are prohibited from constructing or installing, and the Corporation Commission is prohibited from licensing, any new gin plant until satisfactory showing shall have been made to the said Commission that said gin is a needed utility and that the proposed corporation, firm or individual is a competent and desirable corporation, firm or individual to establish and operate said gin.

VII

That the respondent gin company has made application to said Corporation Commission of Oklahoma for permission and license to establish and operate a cotton gin at the point known as Packingtown which is a part of Oklahoma City; that is, is a part of the community of Oklahoma City,

Oklahoma, whether within or without the corporate limits of said city, and said point at which such gin is proposed [fol. 7] to be established and operated is about two and one-half miles from the gin of complainant at Capitol Hill, Oklahoma.

That complainant also owns and operates a gin at Wheatland, Oklahoma, which is a point about ten miles from the proposed location of said gin at Packingtown, Oklahoma, and said gins of complainant at Capitol Hill and Wheatland and the proposed gin to be located at Packingtown will all be in the same cotton raising territory, serving such territory, and will all be in competition for the gining of cotton so raised in such territory.

That the establishment and operation of such gin at Packingtown by said respondent gin company will serve and draw to it the patrons of complainant in said territory and will be an injurious invasion of complainant's property rights by impairing the business of complainant, and will deprive him of his property without due process of law and will deny him the equal protection of the laws in violation of and contrary to the Fourteenth Amendment to the Constitution of the United States and will impair complainant's franchise in violation of Section 10, Article I of the Constitution of the United States.

VIII

That the respondent company is organized as a cooperative corporation under the provisions of Article XIX, Chapter 34, Compiled Oklahoma Statutes of 1921, as amended by Chapter 167 of the Session Laws of Oklahoma of 1923, which authorizes ten or more persons to form a corporation for the purpose of conducting, among others, an agricultural or horticultural business upon a cooperative plan; that under said law such corporation is required to apportion, and pay a portion of the profits of the corporation to its members ratably upon the amount of the products sold to the corporation by its members and the amounts of the purchase of members from the corporation, and such corporation is authorized by said law to apportion a part of of such profits to non-members of the corporation upon [fol. 8] the amounts of their purchases and sales from or to the corporation.

This law, as construed and applied by said Corporation Commission, authorized respondent company to engage in the business of ginning seed cotton as a public utility under Article IV, Chapter 20, Compiled Oklahoma Statutes 1921, as amended by Chapter 191 of the Session Laws of Oklahoma of 1923.

IX

That the respondent company is not qualified or competent to receive a license or construct and operate a gin because of the mandatory provisions of the law under which it is organized, requiring it to apportion its profits to its members ratably and empowering it to apportion its profits to its members ratably and empowering it to apportion its profits to its non-members ratably, upon the amount of the products sold to the corporation by its members and the amounts of the purchases by the corporation from its members, as such apportionment of said profits would and does constitute a rebate to said members and non-members upon the charges made by said respondent for ginning the cotton of said members and non-members under rates prescribed by the Corporation Commission, and the granting of such rebate would be contrary to the Constitution, laws and public policy of this state and contrary to and in violation of the Constitution, laws and public policy of the United States.

X

That if the respondent gin company is granted a license and permitted thereunder to maintain and operate a gin at Packingtown, Oklahoma, it will do so under more favorable terms than are accorded to complainant, since under the mandatory provisions of the laws of the State of Oklahoma authorizing respondent company's incorporation, it, although engaged in a public business, will be compelled to [fol. 9] grant such refunds and rebates to its members and have the right and privilege to make such refunds and rebates to its non-members or patrons upon the amount of their patronage.

That your complainant being prohibited from making refunds and rebates and being compelled in the performance of his public duties to charge rates prescribed by the Corporation Commission, will compete with respondent gin

company upon unequal terms, and under greater burdens than are imposed upon respondent gin company, in violation of both the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and in violation of Section 10, Article I of said Constitution, and should complainant charge lesser rates than those prescribed by said Corporation Commission, he would subject himself to heavy fines and penalties provided for the violation of the Commission's orders and established rates, and would also, by charging less than the prescribed rate or by rebating or refunding a portion of the charge made, violate the laws and public policy of the State of Oklahoma.

That the licensing of or the operation of a gin at Packingtown, Oklahoma, by respondent gin company and the method of conducting its business, as aforesaid, is inconsistent with and repugnant to the provisions of Article IV, Chapter 20, Compiled Laws of Oklahoma, 1921, as amended by Chapter 191 of the Session Laws of 1923.

XI

That as aforesaid respondent gin company heretofore, to-wit; on the 8th day of March, 1929, filed its application or petition with said Corporation Commission for a license authorizing it to construct and operate a gin at Packingtown, Oklahoma; that this complainant had no notice thereof and still being without such notice, said application of respondent gin company came on for hearing before said Commission on the 18th day of March, 1929, and said Commission took same under advisement.

[fol. 10] Complainant learned of such hearing of the Corporation Commission shortly after the conclusion of said hearing and immediately upon learning of such hearing filed his application to re-open said case and to have a rehearing thereon for the purpose and to the general end that no order may be made granting a license, and that an order denying and refusing a license to respondent gin company to establish and operate such gin at Packingtown, Oklahoma, might be made and entered; a copy of which application is herewith filed, marked Exhibit "A" and made a part hereof.

That as a part of such application to re-open said case, complainant also filed a protest to the granting of a license

to respondent gin company to establish and operate a gin at Packingtown, Oklahoma, a copy of which is hereto attached, marked Exhibit "B" and made a part hereof.

That on the 8th day of April, 1929, such application to reopen said case came on for hearing before said Corporation Commission, and said Commission denied said application and refused to reopen or rehear said case and then announced that it would make an order granting such license to the said respondent gin company to establish such gin at Packingtown, Oklahoma. That said license, however, has not yet been actually issued.

XII

That said Corporation Commission, unless restrained and enjoined by this Honorable Court, will issue the license prayed for to respondent gin company to establish a gin at Packingtown, Oklahoma, and said respondent gin company will establish and operate said gin, which will result in irreparable damage and loss to this complainant by the impairment, injury to and practical destruction of complainant's business, for all of which there is no adequate remedy or relief at law, although said threatened action will also impair complainant's franchise in violation of Section 10, Article I of the Constitution of the United [fol. 11] States, and in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, since complainant is without adequate remedy save in a court of equity, complainant prays:

1. That the respondents, Corporation Commission of the State of Oklahoma, C. C. Childers, Fred Capshaw and E. R. Hughes, and each of them, their assistants, agents, attorneys, and employes, and all persons acting through or under them, be enjoined and restrained from issuing the said license to respondent company.

2. That respondent, Farmers Union Cooperative Gin Company, its agents, attorneys and employes, and all persons acting through or under it, or them, be enjoined and restrained from the establishment, maintenance or operation of a cotton gin at Packingtown, Oklahoma.

3. That this Court set this cause for hearing on application for an interlocutory injunction, and that on said hearing the Court issue its injunction preliminary until final hearing and perpetual thereafter.

4. That in the meantime, a temporary restraining order be issued in accordance with its prayer for said preliminary injunction, in order that the said complainant will not suffer the irreparable injury and damage that it otherwise would suffer, as is alleged and charged in this bill of complaint.

5. That on said final hearing said preliminary injunction be made perpetual as aforesaid.

6. That complainant may have such other and further relief as may be just, equitable and proper.

7. And this complainant prays that there shall be issued out of this Court, directed to the Marshal, a writ of subpœna to be served upon the respondents directing them upon a certain day and under certain pain to be and appear before this Honorable Court and then and there true, direct [fol. 12] and perfect answer to make to the premises, but not under oath—answer under oath to be expressly waived —and further to stand to, abide and perform such other and further direction as may be conformable to equity and good conscience as to this Court shall seem meet.

And your complainant will ever pray.

William Lowe, Complainant, by Rainey, Flynn, Green & Anderson, His Attorney-.

Duly sworn to by William Lowe. Jurat omitted in printing.

[fol. 13] EXHIBIT A TO BILL OF COMPLAINT

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

No. 9196

In re: Application of FARMERS UNION GIN COMPANY for a Gin License at Packingtown, Oklahoma

Application to reopen case

Comes now William Lowe and respectfully shows to this Honorable Commission that he is the owner of a cotton gin

at Capitol Hill in Oklahoma City, Oklahoma, and that he is operating said gin under the trade name of Capitol Hill Gin Company. That the application of the Farmers Union Gin Company for a license to construct and operate a cotton gin at Packingtown in Oklahoma City, Oklahoma, was filed with this Commission on the 8th day of March, 1929 and that said application was set for hearing on Monday, March 18, 1929, and that on said date no protest having been filed, this Commission too, said application under advisement and has not as yet taken any action on said application.

Your petitioner respectfully shows that he did not receive any notice of said hearing and therefore had no opportunity to appear and protest the granting of said license; that he desires to protest the same both on the grounds that the same is not a needed utility and that the applicant is not a competent person to engage as a public utility in the business of ginning seed cotton.

Wherefore. petitioner respectfully prays this Honorable Commission that it re-open said case and set the same for hearing and permit him to file his written protest therein, copy of said protest being hereto attached, marked Exhibit "A" and made a part hereof.

William Lowe, by Rainey, Flynn, Green & Anderson, Attorneys.

STATE OF OKLAHOMA,
Oklahoma County, ss:

William Lowe, of lawful age, being first duly sworn, on oath deposes and says that he has read the foregoing application to re-open case and knows the contents thereof, and that the allegations and statements therein contained are true and correct.

William Lowe.

Subscribed and sworn to before me this — day of March, 1929. My commission expires Nov. 4, 1929. Beulah Simmons, Notary Public. [Seal.]

[fol. 14] EXHIBIT B TO BILL OF COMPLAINT

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

No. —

In re: Application of FARMERS UNION COOPERATIVE GIN Company for a Gin License at Packingtown, Oklahoma

Protest of William Lowe

Comes now William Lowe and protests and objects to the granting and issuance of a license to Packingtown to construct and operate a gin at ——, Oklahoma, and as grounds therefor states:

Protestant William Lowe is engaged in the business of operating a cotton gin in the City of Oklahoma City, Oklahoma, under a license duly issued to him by the Corporation Commission of the State of Oklahoma on the 1st day of May, 1924, under and pursuant to the provisions of Article 4, Chapter 20, Compiled Oklahoma Statutes 1921, as amended by Chapter 191 of the Session Laws of 1923. That under and by virtue of said Chapter 20, cotton gins are public utilities and the operation of the same for the purposes of ginning seed cotton is a public business and that protestant, in the operation of his said cotton gin at Oklahoma City, Oklahoma, is engaged in a public business, and that the said cotton gin is a public utility; that under and by virtue of Section 3715 of the Chapter and Article aforesaid, the Corporation Commission is vested with the power and authority and is charged with the duty of regulating and controlling its cotton gin and all other cotton gins in all matters relating to the performance of such duties and the charges therefor, with the power to fix rates, rules, charges and regulations to be observed by it and by all other persons operating gins in the State of Oklahoma, and that by virtue of Section 3717 of said Chapter and Article, said Corporation Commission is vested with power and authority to enforce its orders against any person, firm, company or corporation maintaining or operating a gin or gins by imposing fines against him or them for the violation of any of its said orders.

Protestant further alleges that under the provisions of Section 3713 of said Chapter and Article, no person or persons or corporation or corporations, in the state of Oklahoma are permitted to maintain and operate a gin or gins for the purpose of ginning seed cotton without first having secured a license for such purpose from the said Corporation Commisison, and that by virtue of Section 3714 of said Chapter and Article as amended by Chapter 191 of the Session Laws of 1923, all persons and corporations are prohibited from constructing or installing, and the Corporation Commission is prohibited from licensing any new gin plant, until satisfactory showing shall have been made to the Corporation Commission setting forth that such gin is a needed utility and that the proposed corporation, company, firm, corporation or individual is a competent and desirable company, firm, corporation or individual to establish and operate said gin.

Protestant further alleges that there are now four gins located and being operated in the town of Oklahoma City, Oklahoma, that said gins are sufficient in number and capacity to properly and adequately gin all of the cotton raised in the vicinity of Oklahoma City, Oklahoma, and that there is no necessity for the establishment and operation of another gin at said place, and the gin so sought to be licensed by this Commission and run by Farmers Union CoOperative Gin Company is not a needed utility; that the granting of such license to and the establishment of such a gin by said Farmers Union CoOperative Gin Co. is and will be desturctive of protestant's business and will deprive [fol. 15] him of his property without due process of law and will deny the equal protection of the laws in violation of and contrary to the Fourteenth Amendment to the Constitution of the United States.

Protestant further alleges that the applicant Farmers Union CoOperative Gin Company is organized under the provisions of Article 19, Chapter 34, Compiled Oklahoma Statutes of Oklahoma, 1921, as amended by Chapter 167 Session Laws 1923, authorizing ten (10) or more persons to form a corporation for the purpose of conducting among others, an agricultural or horticultural business upon a cooperative plan; that under said law, after setting aside a surplus or reserve fund and payment of dividends at a rate not to exceed 8% per annum, the remainder of the profits

of the corporation must be apportioned and paid to its members ratably upon the amount of products sold to the corporation by its members and the amount of the purchases by its members form the corporation, and such corporation may apportion such profits to non-members upon the amount of their purchases and sales from and to the corporation.

Protestant says that said Article 19, Chapter 34 Compiled Oklahoma Statutes 1921, as amended by Chapter 167 Session Laws 1923 (Sec 5637 to 5652 inclusive) do not authorize a cooperative corporation organized thereunder to become a public utility and engage in the business of ginning seed cotton, under Article 4, Chapter 20, C. O. S. 1921, as amended by Chapter 191 of Session Laws of Oklahoma 1923.

Protestant further says that the applicant Farmers Union CoOperative Gin Company is not qualified or competent to receive a license to construct and to operate a gin because of the mandatory provisions of Section 5648 requiring it to apportion profits to its members ratably upon the amount of the products sold to the corporation by its members and the amounts of the purchases by the corporation from its members, if in fact such provisions could apply to the ginning business, as such apportionment of said profits would constitute a rebate to said members, contrary to the Constitution, laws and public policy of this State, and contrary to the Constitution, laws and public policy of the United States.

Protestant further says that the granting of a license to and the engaging in the operation of a gin by the said Farmers Union CoOperative Gin Co. would impair protestant's franchise by taking a portion of the business that would otherwise go to him; would constitute unfair competition, and the method of conducting its business, as required and authorized by the law under which it was incorporated, would result in discrimination and class legislation in favor of the applicant and against the protestant in violation of and contrary to the Fourteenth Amendment to the Constitution of the United States.

Protestant further says that the licensing of or the operation of said Farmers Union CoOperative Gin Co. gin and the method of conducting its business as required by said Article 19, Chapter 34 C. O. S. as amended by Chapter

167 Session Laws 1923, is inconsistent with and repugnant to the provisions of Article 4, Chapter 20, compiled Laws of Oklahoma 1921, as amended by Chapter 191 of the Session Laws of Oklahoma 1921 as amended by Chapter 191 of the Session Laws of Oklahoma, 1923.

Wherefore protestant prays that this, his protest, be sustained and that the application of Farmers Union Co-Operative Gin Co. for a license to operate a gin at Packingtown, Oklahoma, as prayed for by it, be denied.

William Lowe, Protestant. Rainey, Flynn, Green & Anderson, Attorneys.

[fol. 16] [File endorsement omitted.]

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS AND ANSWER—Filed April 26, 1929

Come now the defendants, Corporation Commission of the State of Oklahoma, C. C. Childers, Fred Capshaw and E. R. Hughes, members thereof, and Edwin B. Dabney, Attorney General of the State of Oklahoma, and the Farmers Union Cooperative Gin Company, and for answer herein files this its motion to dismiss and answer the allegations contained in the bill of complaint filed herein as follows, to-wit:

I

Defendants move the court to dismiss the bill of complaint herein for the following reasons, to-wit:

(a) That the bill of complaint and the allegations contained therein are insufficient in law or equity to constitute a basis for the relief sought.

(b) For the reason that this action is prematurely brought under the rule of comity existing and practiced by the Federal courts in their relationship to the state courts including the courts of the State of Oklahoma in that the matters and things contained and alleged in said bill of complaint, with respect to refunding and rebating and dis-

tribution of surplus profits are all practices which come within the jurisdiction of the Corporation Commission of the State of Oklahoma, which has authority upon complaint [fol. 18] to make and enter orders prohibiting and regulating such practices if found contrary to law.

(c) For the reason that complainant, William Lowe, doing business under the trade name of Capitol Hill Gin Company, has not complained to the Corporation Commission of the State of Oklahoma, or sought relief at the hands of said Commission, looking to the prevention of such practices or contemplated practices as are alleged in said bill of complaint.

(d) For the reason that no constitutional right of said complainant, William Lowe, is shown by said bill to be involved or violated by the contemplated action of defendants herein or any of them.

II

Defendants and each of them further answering, admit that Complainant is engaged in and duly authorized to engage in the operation of the cotton gin at Capitol Hill in Oklahoma City, Oklahoma, under a license duly and regularly issued by the Corporation Commission of the State of Oklahoma under and by virtue of Art. IV of Chap. 20, Compiled Laws of Oklahoma, 1921, as amended by Chap. 191 of the Session Laws of Oklahoma of 1923, and by Chap. 109 of the Session Laws of Oklahoma, 1925.

Defendants and each of them admit that the Corporation Commission of the State of Oklahoma is and was at all times mentioned in said bill of complaint, an administrative body created by the Constitution of the State of Oklahoma having its offices and headquarters and principal place of business in the city of Oklahoma City, Oklahoma County, State of Oklahoma, and within the jurisdiction of the District Court of the United States for the Western District of Oklahoma, and that the defendants, Fred Capshaw, C. C. Childers and E. R. Hughes are, and at all times mentioned, were the duly elected, qualified and acting members of said Commission, with their headquarters in Oklahoma City, Oklahoma [fol. 19] County, State of Oklahoma. Defendants in this connection, however, allege that in addition to the adminis-

trative authority exercised by the Corporation Commission of the State of Oklahoma, do also possess legislative authority and in some instances exercise quasi-judicial authority.

Defendants deny that this is a proper suit in equity between citizens of the State of Oklahoma, arising under and involving the construction and application of the Constitution and laws of the United States and deny that the amount in controversy, exclusive of interest and costs, exceeds the sum of $3,000.00.

Defendants admit that defendant, Farmers Union Cooperative Gin Company is a domestic corporation organized under and pursuant to Article XIX of Chapter 34, Compiled Statutes of Oklahoma, 1921.

Defendants admit that under and by virtue of Section 3712 of Chapter 20 of Article IV, Compiled, Statutes of Oklahoma, 1921, cotton gins are public utilities and that the operation of same for the purpose of ginning seed cotton is a public business and that plaintiff in the operation of his cotton gin at Capitol Hill, Oklahoma City, is engaged in a public business and that the said cotton gin is a public utility. They further admit that under and by virtue of Section 3715 of said Chapter and Article, the Corporation Commission is vested with the power and authority and is charged with the duty of regulating and controlling such cotton gins in all matters relating to the performance of such duties and the charges therefor, with power to fix rates, rules, charges, and regulations to be observed by him and all other persons operating gins in the State of Oklahoma, and that by virtue of Section 3717 of said Chapter and Article the Corporation Commission is vested with the power and authority to enforce its orders against any person, firm or corporation maintaining or operating a gin or gins by the imposition of fines against them for the violation of any said orders.

[fol. 20] Defendants admit that under the provision of Section 3715 of said Chapter and Article that no person or persons or corporations of the State of Oklahoma are permitted to maintain or operate a gin for the purpose of ginning seed cotton without first having secured a license for such purpose from the Corporation Commission, and that by virtue of Section 3714 of said Chapter and Article as

amended by Chapter 109 of the Session Laws of 1925 that all persons and corporations are prohibited from the constructing or installing any new gin plant until satisfactory showing shall have been made to the Corporation Commission setting forth that such gin is a needed utility and that the proposed corporation, company, firm, or individual is a competent and desirable corporation, company, firm or individual to establish and operate said gin as may appear in the discretion of said Commission, and that said provisions apply to all persons, firms and corporations and classes with the exceptions set forth by the bill of complaint.

Defendants admit that the respondent gin company has made application to said Corporation Commission of the State of Oklahoma for permission and license to establish and operate a cotton gin at the point known as Packingtown, which is a part of Oklahoma City, and that said point at which such gin is proposed to be established and operated is about two and one half or three miles from the gin of complainant at Capitol Hill, Oklahoma City.

Defendants admit that complainant also owns and operates a gin at Wheatland, Oklahoma, a point about ten miles from the proposed location of the gin at Packingtown, Oklahoma, and that each of said gins will be in competition in the ginning of cotton raised in the general ginning territory surrounding said gins. However, defendants deny that respondent gin company will be or is about to be granted a license authorizing the construction, maintenance and operation of a cotton gin at Packingtown, without a [fol. 21] sufficient showing that a necessity exists for such added gin facility. Defendants therefore deny that the establishment and operation of such gin at Packingtown, by respondent gin company will draw from complainant in said territory any patronage to which complainant is entitled, and further deny that complainant's property rights will be in any wise injured, or he will be denied due process of law or the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States, or that complainant's franchise will in any wise be impaired in violation of Section 10, Art. 1 of the Constitution of the United States.

III

Defendants further answering aver the facts to be that respondent gin company has shown a necessity as required by law, for the construction, maintenance and operation of a cotton gin facility at Packington, Oklahoma City, Oklahoma, having shown such necessity under the terms and provisions of the statute with respect to licensing gins, and respondent is entitled to receive a license at the hands of the Corporation Commission of the State of Oklahoma.

IV

Defendants admit that respondent company was organized as a co-operative corporation under the provisions of Art. 19, Chap. 34 Compiled Oklahoma Statutes, 1921, as amended by Chap. 167 of the Session Laws of Oklahoma, 1923, which *which* authorizes ten or more persons, firms or corporations to organize for the purpose of conducting, among others, an agricultural or horticultural business upon a cooperative plan.

[fol. 22] Defendants further admit that under said law, such corporations as are organized under the terms and provisions of said statute are required to apportion and distribute a certain portion of the surplus profits of the corporation to its members ratably upon the amount of the products sold to the corporation by its members, and the amount of purchases by members of the corporations, and that such corporations are authorized to apportion a part of said profits to non-members of the corporation upon the amount of their purchases and sales from or to the corporation. Defendants, deny however, that the Corporation Commission has construed the terms and provisions of such statute so as to permit the distribution of the profits earned and received from the ginning of cotton among the stockholders on a ratable basis.

Defendants deny that the provisions of Art. 19, Chap. 34 Compiled Oklahoma Statutes, 1921, as amended by Chap. 167, Session Laws, Oklahoma, 1923, in any wise authorize respondant gin company to distribute or apportion any part of its profits to stockholders ratably upon the basis of the amount of patronage of such stockholders.

V

Defendants further answering, deny that respondent gin company is not a qualified or competent concern to receive a license or construct, maintain and operate a gin because of any of the provisions of the law under which it is organized requiring it to apportion its profits earned and received from products sold to the corporation or its members, and further deny that even though said law might be construed to authorize such a practice, that it in any wise constitutes a rebate to said members and non-members upon the charges made by said respondent for ginning cotton for said members and non-members under rates prescribed by the Corporation Commission, and deny that the granting of such a distribution of such profits would be contrary to [fol. 23] the Constitution or laws or in any wise contrary to public policy or in violation of the Constitution of the United States.

VI

Respondents deny that in case respondent gin company is granted a license and permitted thereunder to maintain and operate a gin at Packingtown, that it will do so under more favorable terms than are accorded to complainant, or that under the provisions of the laws of Oklahoma authorizing respondent company's incorporation, said respondent would in any wise be compelled to grant any refund or rebate to its members, or have the right or privilege to make such refund or rebate to its members or non-members or patrons upon the amount of their patronage. Respondent therefore denies that complainant will be unable to compete with respondent gin company upon equal terms and under greater burdens than are imposed upon respondent gin company, or that the granting of the license sought to be enjoined would be in any wise violative of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States or in violation of Sec. 10, Art. 1 of said Constitution.

VII

That respondent, Corporation Commission admits that it has signified an intention to issue the license prayed for

to respondent gin company authorizing it to establish a gin at Packingtown, Oklahoma, and admits that respondent gin company will establish and operate said gin, but denied that the establishment, maintenance and operation of said gin will in any wise result in irreparable damage or loss to complainant by the impairment, injury to or practical destruction of complainant's business, and further denies complainant's allegation to the effect that there is no adequate remedy or relief at law.

[fol. 24] VIII

The defendants further answering aver that the cotton production industry including the gathering, picking, ginning, and stowing and marketing thereof is a leading agricultural pursuit in so far as values are concerned within the State of Oklahoma; that the ginning, marketing and processing of said product is one that is subject to continual abuse in that a large proportion of the gins in the State of Oklohoma have been constructed and are operated by those persons who are also interested in the purchase of cotton seed extract from the cotton as well as in the purchase of the staple after it is ginned and processed for marketing; that such concerns as are engaged with cotton seed business as well as the cotton buying business and also operating gine in connection therewith have an advantage amounting to a virtual monopoly of such products within the State of Oklahoma.

That the State of Oklahoma through legislative enactments throughout the past has by the adoption of legislation designed to foster and encourage agriculture, enacted statutes permitting all persons as well as those engaged in agriculture and horticulture to organize for the purpose of conducting agricultural, dairy, live stock, irrigation, horticultural, mercantile, manufacturing, mechanical, and industrial business upon a cooperative plan; that pursuant to said policy the Legislature of the State of Oklahoma has enacted the statute complained of. That portion of the 1919 statutes aforesaid, subject to the attack of complainant in Section 5648 Compiled Oklahoma Statutes, 1921, which reads and provides as follows:

"(1) Not less than ten per cent thereof accruing since the last apportionment shall be set aside in a surplus or reserve fund until such fund shall equal at least fifty per cent of the paid up capital stock.

(2) Dividends at a rate not to exceed eight per cent per annum, may, in the discretion of the directors, be declared upon the paid up capital stock. Five per cent may be set aside for educational purposes.

[fol. 25] (3) The remainder of such net earnings and profits shall be apportioned and paid to its members ratably upon the amounts of the products sold to the corporation by its members, and the amounts of the purchases of members from the corporations; provided, that if the bylaws of the corporation shall so provide the directors may apportion such earnings and profits in part to non members upon the amounts of their purchases and sales from or to the corporation."

Respondents, with respect to the terms and provisions of Section 5649 set forth above, aver that the language contained in said section, and particularly subdivision 3 thereof, are in no wise contrary to or incompatible with the public utility statutes of the State of Oklahoma, which authorize the Corporation Commission to regulate and control cotton gins in all matters relating to the performance of their public duties or the power to fix rates, rules, charges and regulations to be observed by all persons, firms or corporations operating gins in the State of Oklahoma.

Having fully answered the matters and things alleged in said bill of complaint, the defendants and each of them pray this Honorable Court that said bill of complaint be dismissed, and that the relief prayed for therein be in all things denied, and that they go hence with their costs without day.

E. S. Ratliff, for Corporation Commission. S. P. Freeling, for Farmers Union Cooop. Gin —.

[fol. 26] *Duly sworn to by A. P. Freeling and E. A. Ratliff. Jurats omitted in printing.*

[File endorsement omitted.]

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

AGREED STATEMENT OF FACTS—Filed April 26, 1929

It is stipulated and agreed by and between the parties hereto that the following facts are agreed to and that either of the parties may introduce any additional evidence that may be relevant or material.

I

That William Lowe is engaged in the cotton ginning business, doing business under the trade name of Capitol Hill Cotton Gin, in Capitol Hill, Oklahoma City, Oklahoma; that said gin is operated under and by virtue of a license duly isued by the Corporation Commission of the State of Oklahoma under and by virtue of Article 40, Chapter 7 Compiled Oklahoma Statutes of 1921, as amended by Chapter 191 Session Laws of Oklahoma, 1923. That C. C. Childers, Fred Capshaw and E. R. Hughes are the duly elected, qualified and acting members of the Corporation Commission of the State of Oklahoma, and that the amount in controversy, exclusive of interest and costs, exceeds the sum of $3,000.00

II

That the Farmers Union Cooperative Gin Company is a domestic corporation of the State of Oklahoma, organized and existing under and pursuant to Article 19 of Chapter 34 Compiled Oklahoma Statutes of 1921.

[fol. 28] That Section 3712 of Chapter 20 of Article IV, Compiled Statutes of Oklahoma of 1921, declares cotton gins to be public utilities and the operation of the same for the purpose of ginning seed cotton is a public business.

That said Corporation Commission pursuant to the authority vested in it under the laws of the State of Oklahoma, has promulgated rates and charges for the ginning of seed cotton, which are applicable to all engaged in the cotton ginning business for the general public.

That on the 8th day of March, 1929, Respondent, Farmers Union Cooperative Gin Company, filed its application

with the Corporation Commission for a license to operate a cotton gin as a public utility at a point known as Packingtown, Oklahoma, which is a part of Oklahoma City; that is, a part of the community of Oklahoma City, Oklahoma, whether within or without the corporate limits of said city. That said place where said gin is proposed to be located and operated is about two and one-half miles from complainant's gin located at Capitol Hill, Oklahoma; that said complainant also owns and operates a cotton gin at Wheatland, Oklahoma, which is an unincorporated town situated about ten miles from the proposed location of said gin at Packingtown, Oklahoma, and that complainant's said gins at Capitol Hill and Wheatland and the proposed gin to be located at Packingtown, Oklahoma, will all be in the same cotton producing territory, serving such territory, and will all be in competition for the ginning of cotton grown in such territory.

III

That subsequent to the filing of the application for a gin license by the Farmers Union Cooperative Gin Company for a gin at Packingtown, Oklahoma, on the 8th day of March, 1929, this complainant filed its written objection and protest with the Corporation Commission of Oklahoma, against the granting of said license, and as grounds therefore alleged that the same was not a needed utility and that the applicant, Farmers Union Cooperative Gin [fol. 29] Company, being organized under and pursuant to the provisions of Article 19, Chapter 34, Compiled Statutes of Oklahoma, 1921, as amended by Section 167, Session Laws of 1923, is not authorized to be a public utility and to engage in the business of ginning seed cotton under Article 4, Compiled Oklahoma Statutes 1921, as amended by Chapter 191 of Session Laws of 1923, and that to grant said license and to permit said Farmers Union Cooperative Gin Company to operate its said gin as a public utility thereunder would result in discrimination and class legislation in favor of the applicant and against protestant, in violation of and contrary to the Fourteenth Amendment of the Constitution of the United States.

IV

That the Corporation Commisison of the State of Oklahoma has heard the application of Farmers Union Cooperative Gin Company of Packingtown, Oklahoma, for said license, and has heard and considered the objection and protest of the complainant, William Lowe, and has threatened to and will, unless restrained and enjoined by the United States Court for the Western District of the State of Oklahoma, issue the license prayed for to respondent gin company, to establish and operate a gin at Packingtown, Oklahoma, and said respondent will establish and operate said gin.

Dated this 26th day of April, 1929.

William Lowe, by Rainey, Flynn, Green & Anderson, Attorneys. E. S. Ratliff, for Corp. Commission. Farmers Union Coop. Gin —, by Freeling & Box, Attys.

[File endorsement omitted.]

[fol. 30] In United States District Court

In Equity. No. 1030

William Lowe, Doing Business under the Trade Name of Capital Hill Gin Company, Complainant,

vs.

The Corporation Commission of the State of Oklahoma, C. C. Childers, Fred Capshaw, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and Farmers Union Co-operative Gin Company, Respondents

Final Decree—Filed June 22, 1929

This cause coming on to be heard upon the application of the plaintiff for a temporary injunction, pursuant to assignment and notice, it is thereupon agreed by counsel for the parties that the cause be also submitted for final decree; and on consideration of the pleadings, stipulation of facts and the arguments of counsel, it is by the court ordered, adjudged and decreed:

That the defendant, the Corporation Commission of the State of Oklahoma, be and it is hereby perpetually enjoined from issuing a license to the Farmers Union Co-operative Gin Company, a public utility in the State of Oklahoma, to conduct or operate a cotton gin at Packingtown, within or without the corporate limits of the City of Oklahoma City, State of Oklahoma, for and upon the ground that by the laws of said state, applicable to said company, said company is required to apportion and pay a part of its net earnings to its members ratably upon the amounts of the products sold to the corporation by its members, and the amounts of the purchases of members from the said com-
[fol. 31] pany, and its directors are authorized, if so provided by its by-laws, to apportion such earnings and profits to non-members upon the amounts of their purchases and sales from or to said company, and that such requirements upon and privileges of said company, constitute an unreasonable and arbitrary discrimination in competitive ginning business and operations in favor of the said company and against the plaintiff, and would if said license be issued, effect a denial to the plaintiff of the equal protection of the laws, in violation of the Constitution of the United States.

That the costs of this suit be taxed to and against the defendants.

To said decree and every part thereof the defendants, and each of them, at the time duly excepted and except.

Dated June 22, 1929.

John H. Cotteral, Circuit Judge. John C. Pollock, District Judge. Edgar S. Vaught, District Judge.

[File endorsement omitted.]

[fol. 32] In United States District Court

Notice and Petition for Appeal—Filed July 20, 1929

To the Honorable Edgar S. Vaught, United States District Judge for the Western District of Oklahoma:

The above named defendants, The Corporation Commission of the State of Oklahoma, C. C. Childers, Fred Capshaw and E. R. Hughes, constituting the Corporation Commission of the State of Oklahoma, and Farmers Union Co-operative Gin Company, feeling themselves aggrieved by

the order, judgment and decree rendered and entered in the above entitled cause on the 22nd day of June, 1929, do hereby appeal from the said decree to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith, and they pray that said appeal be allowed, and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States *of the United States* sitting at the City of Washington in the District of Columbia, as under the rules in such cases made and provided; that a bond in appeal and supersedeas be fixed in such sum as the court may deem proper, and that the court make all proper orders.

The Corporation Commission of the State of Oklahoma, C. C. Childers, Fred Capshaw, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, by E. S. Ratliff, their Attorney, and Farmers Cooperative Gin Company, by Freeling & Box, Its Attorneys.

[File endorsement omitted.]

[fol. 33] IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed July 20, 1929

Come now the defendants in the above entitled cause and file the following assignment of errors upon which they will rely in their appeal in said cause from the decree rendered by this Honorable Court on the 22nd day of June, 1929:

1. The District Court of the United States for the Western District of Oklahoma erred in holding that Article XIX, Chapter 34 Compiled Oklahoma Statutes of 1921, as amended by Chapter 167 of the Session Laws of Oklahoma, 1923, is unconstitutional and void, and erred in perpetually enjoining the Corporation Commission of the State of Oklahoma from issuing a license to the Farmers Co-operative Gin Company in the State of Oklahoma to construct or operate a cotton gin at Packingtown, within or without the corporate limits of the City of Oklahoma City, State of Oklahoma, upon the ground that by the laws of said State applicable to said company, said company is required

to apportion and pay a part of its net earnings to its members ratably upon the the amounts of the products sold to the corporation by its members, and the amounts of the purchases of members from the said company, and upon the ground that its directors are authorized, if so provided by its bylaws, to apportion such earnings and profits to non-members upon the amounts of their purchases and sales from or to said company, and that the said court erred in holding that such requirements upon and privileges of said company constitute an unreasonable and arbitrary discrimination in competitive ginning business and operations in favor of the said company and against the plaintiff, and that the said court erred in holding that if such license be issued it would be in effect a denial to the plaintiff of the equal protection of the law and a violation of the Constitution of the United States.

[fol. 34] Wherefore the defendants pray that said above decree be reversed, and that the said District Court of the United States for the Western District of Oklahoma be ordered to enter a decree setting aside its said order, and dismissing the bill of the complainant as prayed for, together with all other, further and suitable relief.

The Corporation Commission of the State of Oklahoma, C. C. Childers, Fred Capshaw, E. R. Hughes, by E. S. Ratcliff, Their Attorney. Farmers Union Co-operative Gin Company, by Freeling and Box, Its Attorneys.

[File endorsement omitted.]

[fol. 35] In United States District Court

Order Allowing Appeal—Filed July 20, 1929

On this 20th day of July, 1929, on motion and petition of the defendants, it is hereby ordered by the Court that an appeal to the Supreme Court of the United States of America, from the Final Decree heretofore filed and entered herein on the 22nd day of June, 1929, be and the same is hereby allowed, and that the bond on appeal be fixed in the sum of One Thousand Dollars.

Edgar S. Vaught, United States District Judge.

[File endorsement omitted.]

[fol. 36] Bond on appeal for $1,000, approved and filed October 4, 1929, omitted in printing.

[fol. 37] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND STIPULATION AS TO PARTS OF RECORD TO BE PRINTED—Filed Oct. 22, 1929

In accordance with Rule eleven of this honorable court appellants hereby specify the following as points upon which it will rely for a reversal of the judgment of the United States District Court for the Western District of Oklahoma:

I

That the said District Court of the United States for the Western District of Oklahoma committed error in perpetually enjoining the Farmers Union Co-Operative Gin Company in the State of Oklahoma from constructing or operating a cotton gin at Packingtown in the city of Oklahoma City, said State, for and upon the grounds that by the laws of said State applicable to said company, said company is required to apportion and pay a part of its net earnings to its members ratably upon the amounts of the products sold to the corporation by its members and the amounts of the purchases of members from the said company, and that its directors are authorized if so provided by its by-laws, to apportion such earnings and profits to non-members upon the amounts of their purchases and sales from or to said company.

And that the said court committed error in holding that the requirements of Article 19, Chapter 34, Compiled Statutes of Oklahoma, 1921, as amended by Chapter 167 of the Session Laws of 1923, constitute an unreasonable and arbitrary discrimination in competitive ginning business. And the court erred in holding that if said license be issued it would be in effect a denial to the plaintiff of the equal protection of the laws and in violation of the Constitution of the United States.

[fol. 38] And the court erred in holding that the effect of said law would be to deprive the complainant of the equal protection of the law as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

In support of the foregoing points appellant hereby designates the following parts of the record to be printed, which

it thinks necessary for a proper determination of this appeal, and hereby requests the Clerk of The Honorable United States Supreme Court to have the same printed under his supervision:

1. Citation and Service.
2. Bill of Complaint.
3. Motion to Dismiss and Answer.
4. Agreed Statement of Facts.
5. Decree.
6. Petition for Appeal.
7. Order allowing Appeal.
8. Citation and Service.
9. Assignment of Errors.
10. Bond on Appeal.
11. Stipulation for Transcript of Record on Appeal.

The Corporation Commission of the State of Oklahoma, C. C. Childers, Fred Capshaw, E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, by E. S. Ratliff, Its Attorney.
Farmers Union Co-operative Gin Company, by Freeling & Box, Its Attorneys.

[fol. 39] The undersigned, Counsel for Appellee, hereby acknowledge service of Appellant's specifications of points upon which they will rely in the Supreme Court, and the designation of portions of the record to be printed, and accepts said designation of portions of record to be printed as calling for the proper record in this case.

Dated this 13th day of July, 1929.

Melton & Melton, Rainey, Flynn, Green & Anderson,
Attorneys for Appellee.

[File endorsement omitted.]

[fol. 40] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 34,585. W. Oklahoma D. C. U. S. Term No. 454. The Corporation Commission of the State of Oklahoma, etc., and Farmers Union Co-operative Gin Company, appellants, vs. William Lowe, doing business under the trade name of Capitol Hill Gin Company. Filed Oct. 22, 1929. File No. 34,585.

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CHARLES ELM

In The Supreme Court of The United States

Corporation Commission of the State of Oklahoma, and Farmers Union Co-operative Gin Company,
Appellants,

vs.

William Lowe, doing business under the trade name of Capitol Hill Gin Company, Appellee.

No. 454
October Term
1929.

PRINTED STATEMENT OF APPELLANT IN ACCORDANCE WITH RULE 12 OF THE COURT

Corporation Commission of the State of Oklahoma,
and
Farmers Union Co-operative Gin Company,
By S. P. FREELING,
Their Attorney.

In The Supreme Court of The United States

Corporation Commission of the State of Oklahoma, and Farmers Union Co-operative Gin Company,
Appellants,

vs.

William Lowe, doing business under the trade name of Capitol Hill Gin Company, Appellee.

No. 454
October Term
1929.

PRINTED STATEMENT OF APPELLANT IN ACCORDANCE WITH RULE 12 OF THE COURT

Complying with Rules 12 and 13 of the Court, the appellants state as follows:

FIRST: The statutory provisions believed to sustain the jurisdiction of the Court are as follows:

Section 345, Title 28, U. S. C. A. (Judicial Code, Section 238, Amended);

Section 380, Title 28, U. S. C. A. (Judicial Code, Section 266, Amended);

Section 861a and 861b, Title 28, U. S. C. A.

The date of the judgment and decree sought to be reviewed was rendered on the 22nd day of June, 1929. (P..30.. Record).

The date on which the application for the appeal was presented was July 20, 1929. (P..37.. Record).

And the order allowing the appeal was dated July 20, 1929. (P..35.. Record).

The nature of the case is as follows:

William Lowe, doing business under the trade name of Capitol Hill Gin Company, filed his bill of complaint against the Corporation Commission of the State of Oklahoma and the Farmers Union Co-operative Gin Company, for preliminary and perpetual injunction. He alleged:

(a) That he was engaged and duly authorized to operate a cotton gin in Capitol Hill in Oklahoma City, under a license duly issued to him by the Corporation Commission under and by virtue of Article 4, Chapter 20 Compiled Laws of Oklahoma, 1921, as amended by Chapter 191 of the Session Laws of Oklahoma, 1923.

(b) That the respondent gin company is a domestic corporation of the State of Oklahoma, organ-

ized and existing under and pursuant to Article XIX of Chapter 34 of the Compiled Statutes of Oklahoma, 1921.

(c) That the suit involved the construction and application of the Constitution and laws of the United States, and that the amount in controversy, exclusive of interest and costs, exceeds the sum of Three Thousand ($3000.00) Dollars.

(d) That by virtue of Section 3712 of Chapter 20 of Article 4, Compiled Statutes of Oklahoma, 1921, cotton gins are public utilities, and the operation of the same is a public business, and that the gin of the complainant is a public utility.

(e) That the Corporation Commission is vested with the power and authority, and is charged with the duty of regulating and controlling cotton gins, to fix rates, rules and regulations to be observed by all persons operating gins within the state.

(f) That under the provisions of Section 3713, Compiled Oklahoma Statutes, 1921, no person is permitted to maintain or operate a gin without having secured a license from the Corporation Commission.

(g) That the respondent gin Company had made an application to the Corporation Commission for a permit and license to operate a gin at a point known as Packingtown, which is a part of Oklahoma City.

(h) The real gist of the bill is found in paragraphs 8, 9 and 10 thereof, which are as follows:

"VIII.

"That the respondent company is organized as a co-operative corporation under the provisions of Article XIX, Chapter 34, Compiled Oklahoma Statutes of 1921, as amended by Chapter 167 of the Session Laws of Oklahoma of 1923, which authorizes ten or more persons to form a corporation for the purpose of conducting, among others, an agricultural or horticultural business upon a co-operative plan; that under said law such corporation is required to apportion, and pay a portion of the profits of the corporation to its members ratably upon the amount of the products sold to the corporation by its members and the amounts of the purchase of members from the corporation, and such corporation is authorized by said law to apportion a part of such profits to non-members of the corporation upon the amounts of their purchases and sales from or to the corporation.

"This law, as construed and applied by said Corporation Commission, authorized respondent company to engage in the business of ginning seed cotton as a public utility under Article IV, Chapter 20, Compiled Oklahoma Statutes 1921, as amended by Chapter 191 of the Session Laws of Oklahoma of 1923.

"IX.

"That the respondent company is not qualified

or competent to receive a license or construct and operate a gin because of the mandatory provisions of the law under which it is organized, requiring it to apportion its profits to its members ratably and empowering it to apportion its profits to its non-members ratably, upon the amount of the products sold to the corporation by its members and the amounts of the purchases by the corporation from its members, and such apportionment of said profits would and does constitute a rebate to said members and non-members upon the charges made by said respondent for ginning the cotton of said members and non-members under rates prescribed by the Corporation Commission and the granting of such rebate would be contrary to the Constitution, laws and public policy of this state and contrary to and in violation of the Constitution, laws and public policy of the United States.

"X.

"That if the respondent gin company is granted a license and permitted thereunder to maintain and operate a gin at Packingtown, Oklahoma, it will do so under more favorable terms than are accorded to complainant, since under the mandatory provisions of the laws of the State of Oklahoma authorizing respondent company's incorporation, it, although engaged in a public business, will be compelled to grant such refund and rebate to its members and have the right and privilege to make such refund and rebate to its non-members or patrons upon the amount of their patronage.

"That your complainant being prohibited from making refunds and rebates and being compelled in the performance of his public duties to charge rates prescribed by the Corporation Commission, will compete with respondent gin company upon unequal terms, and under greater burdens than are imposed upon respondent gin company, in violation of both the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and in violation of Section 10, Article 1 of said Constitution, and should complainant charge lesser rates than those prescribed by said Corporation Commission, he would subject himself to heavy fines and penalties provided for the violation of the Commission's orders and established rates, and would also, by charging less than the prescribed rate or by rebating or refunding a portion of the charge made, violate the laws and public policy of the State of Oklahoma."

The contention was that the 1919 Act (Compiled Statutes of Oklahoma, 1921, Paragraph 5637, et seq.) organized under that Act to engage in the public utility business, denies complainant the equal protection of the law because it permits such corporation to conduct its business on more favorable terms than complainant is permitted to under the law. The pertinent part of the law complained of is found in Section 5648, Compiled Oklahoma Statutes, 1921, of the Act passed in 1919, is as follows:

"The directors, subject to revision by the stockholders, at any general or special meeting lawfully called, shall apportion the net earnings and profits thereof from time to time at least once in each year in the following manner:

"(1) Not less than ten per cent thereof accruing since the last apportionment shall be set aside in a surplus or reserve fund until such fund shall equal at least fifty per cent of the paid up capital stock.

"(2) Dividends at a rate not to exceed eight per cent per annum, may, in the discretion of the directors, be declared upon the paid up capital stock. Five per cent may be set aside for educational purposes.

"(3) The remainder of such net earnings and profits shall be apportioned and paid to its members ratably upon the amounts of the products sold to the corporation by its members, and the amounts of the purchases of members from the corporation; provided, that if the by-laws of the corporation shall so provide the directors may apportion such earnings and profits in part to non-members upon the amounts of their purchases and sales from or to the corporation."

Upon a hearing before three judges, as provided by law, the temporary injunction theretofore issued was made permanent, the opinion concerning which will be found in the record at page ..30..

An injunction was prayed in the usual form, and

on June 22, 1929, the court, with three judges sitting, issued the injunction, which, by agreement, was made perpetual, the opinion concerning which will be found in the record, pages ..30.....

We contend that Section 380, Title 28, U. S. C. A., above cited, sustains the jurisdiction of the court. And also the following cases:

Pullman Company v. A. C. Croom, Comptroller of the State of Florida, 34 Sup. Ct. Rep., 182, and cases therein cited.

Respectfully submitted,

Corporation Commission of the State of Oklahoma,
and
Farmers Union Co-operative Gin Company,
By S. P. FREELING,
Their Attorney.

A copy of the above and foregoing printed statement is acknowledged to have been served by the appellants and received by the appellee this, the 18th day of November, 1929.

.....

By .....
His Attorneys